IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/07/2003

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THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

CRL. APPEAL NO.1176 of 2002 AND CRL. APPEAL NO. 1260 of 2002

Virumandi .. Appellant in CA.1176/2002

V.Alagarsamy .. Appellant in CA.1260/2002

-Vs-

State
by the Inspector of Police
Perundurai Police Station
Erode District .. Respondent in both appeals

These criminal appeals are preferred under Section 374 of Cr.P.C. against the judgment of learned Additional District and Sessions Judge and Fast Track Court No.I, Erode in S.C.No.26 of 2002 dated 26.6.2002 .

!For Appellants : Mr. K. Jeganathan in CA.1176/2002
Mr.P.Venkatrasubramaniam
in CA.1260/2002

^For Respondent : Mr.V.Jaya Prakash Narayan
Govt. Advocate (Crl. side)

:COMMON JUDGMENT

This Judgment shall govern both the criminal appeals, namely, C.A. No.1176 of 2002 and C.A.No.1260 of 2002.

2. The appellants in both these appeals, who were ranked as A1 and A2 before Sessions Court where they stood charged, tried and found guilty under Section 395 I.P.C. and sentenced to undergo R.I. for 10 years along with fine of Rs.1000/- in default 6 months R.I., have brought forth these appeals.

3. The short facts necessary for the disposal of these appeals can be stated as follows:

a) P.W.1, Annadurai, is a Lorry driver and P.W.2, Vediyappan, is a Cleaner working under P.W.1. Both were proceeding in a lorry bearing Registration No. PY-01/C 0200 towards Coimbatore. On 13.7.2000 at about 2.00 a.m. they stopped the lorry along with cotton bales worth Rs.12 lakhs near Vijayamangalam NH 47 Main Road and were sleeping in the vehicle. At that time, accused Nos.1 and 2 along with three other accused came there with a common intention of committing dacoity and attacked P.W.1 with torch light and

caused simple injuries on the head of P.W.1 and snatched sum of Rs.1000/-. The accused torn the lungi of P.W.2 and tied P.Ws.1 and 2's eyes, so that they could not see and brought them into their lorry. The accused took the lorry for some distance. Thereafter, P.W.2 was left in an isolated place and the accused proceeded with P.W.1 to some distance. Thereafter, they brought down P.W.1 from the lorry and tied the hands and legs of P.W.1. Leaving P.W.1, the appellants herein along with others took away the lorry with cotton bales worth Rs.12 lakhs.

b) However, P.W.1 untied himself and informed the same to his owner. Thereafter, he proceeded to the Perunthurai Police Station and lodged a complaint under Ex.P.1 at about 7.00 a.m. on 13.7.2000. On the strength of which, P.w.7, Head Constable registered a case in Crime No. 276/2000 under Section 397 I.P.C., prepared Ex.P.6 printed F.I.R. and despatched the same to the concerned Judicial Magistrate. P.W.1 was sent to Government Hospital, Perundurai where he was given treatment by P.W.6 and Ex.P.5 was the copy of Accident Register showing the injuries sustained by P.w.1 at the time of occurrence.

c) On 13.7.2000 at about 7.00 a.m. P.W.9 Inspector of Police, who took up investigation in this case, received the copy of F.I.R., proceeded to the site of occurrence and prepared Ex.P.7 observation mahazar and Ex.P.8 rough sketch. He examined all the witnesses and recorded their statements. Then, he proceeded to the second place of occurrence, namely, Pollakoundanpalayam near Muniappan Koil and prepared Ex.P.9 observation mahazar and Ex.P.10 rough sketch in the presence of the witnesses. Then, he proceeded to the third part of the occurrence place at about 10.30 a.m. and prepared Ex.P.11 observation mahazar and Ex.P.12 rough sketch. He recovered M.Os.1 to 3 under Ex.P.13 in the presence of the witnesses. The observation mahazar under Ex.P.14 and rough sketch Ex.P.15 were prepared at the place where the lorry was missing. He recovered M.O.5, abandoned lorry bearing registration No. PY 01/C 0200, M.O.6 (series) Polyester bales, M.O.7 Tharpalin and M.O.8 Stepney under Ex.p.16 in the presence of the witnesses.

d) On 12.9.2000 at about 2.00 a.m. P.W.8, Inspector of Police, Vathalagundu Police Station during his regular vehicle check up at Periakulam Road found the accused 1 and 2 along with other accused in TATA Sumo Car. On arrest of A1 and A2, A1 volunteered to give a confessional statement before P.W.8. A1 produced Rs.1000/-, which was marked as M.O.4 series in front of the witnesses. Based on his confessional statement, their involvement in the instant case came to light and P.W.8 informed the same to P.W.9 Investi gating Officer. On receipt of information on 12.9.2000, P.W.9 brought P.ws.1 and 2 to Vathalagundu Police Station where P.ws.1 and 2 identified the accused 1 and 2. On 6.2.2001, P.W.9 took the custody of A1 and after enquiry, he was remanded to judicial custody. The Inspector of Police, who succeeded to the office, on completion filed a charge sheet against the accused under Section 395 r/w 397 and 400 I.P.C.

4. In order to prove the charges levelled against the accused/ appellants, the prosecution examined 9 witnesses and marked 16 exhibits and 8 M.Os. After completion of the evidence of prosecution, the appellants/accused were questioned under Section 313 of Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses, which they flatly denied as false. No defence witnesses were examined. After consideration of the rival submissions and scrutiny of the materials

available, the trial court found the accused/ appellants guilty under Section 395 I.P.C. and sentenced them to undergo imprisonment as stated above. Hence, these appeals.

5. Arguing for the appellants, the learned counsel made the following submissions :

The prosecution, in order to prove its case, relied on the evidence of P.Ws.1 and 2, who did not have any previous knowledge about the appellants/accused. Under such circumstances, the identification parade should have been done, but it was not done so. From the evidence of P.W.1 it would be clear that after two months from the date of occurrence, both P.Ws.1 and 2 were taken to police station where A1 and A2 were identified clearly by the police. Under the stated circumstances, it would be very easier for P.Ws.1 and 2 to identify the said persons before the Court. Thus, they have identified. Hence, the identification of A1 and A2 made by P.Ws.1 and 2 before the Court cannot be of any significance whatsoever. The prosecution has relied on the confessional statement given by A1 and recovery of Rs.1000/- from him. But, P.W.3, has clearly spoken in his evidence that the said amount was not recovered in his presence, but after the recovery, he came to the police station, and hence, his evidence in respect of recovery cannot be of any avail to the prosecution. At the time of occurrence, both the appellants were not having any deadly weapon nor had they caused any grievous injuries and the injury sustained by P.W.1, according to P.W.6 Doctor, was not superlative in nature. The trial court has much relied on the evidence of P.Ws.1 and 2. But, in view of the contradictions made and the discrepant evidence, the trial court should have rejected the prosecution case outright, and hence, the accused are entitled for acquittal in the hands of this Court.

6. Stoutly opposing all the contentions put forth by the appellants' side, the learned Government Advocate would submit that in the instant case the occurrence has taken place though in the night hours, a street light was very well available there and the occurrence has taken place for a particular time; that the accused had taken Rs.1000/- from P.W.1; that apart from that the accused torn the lungi of P.W.2 and tied P.Ws.1 and 2's eyes; that the accused took P.Ws.1 and 2 in their lorry for some distance; that there was a possibility of P.W.1 to identify the accused clearly; that even in the First Information Report, though P.W.1 has not given particulars as to the identity of the accused, he has clearly stated that he could well identify the accused, if they are shown to him; that the identification parade was not conducted, since P.W.1 has clearly identified the culprits before the court; that the said evidence would be suffice to prove the prosecution case; that pursuant to the confessional statement, M.Os were recovered from the accused; that it is not in dispute that the properties were recovered from the lorry where it was abandoned; that it is not in dispute that Rs.1000/- belonged to P.w.1; that it is not the case of the accused that Rs.1000/- that was recovered from A1 belonged to him; that the medical evidence has also been brought forth to support the case of the prosecution; that the injuries were caused to P.W.1 at the time of occurrence and that in view of available evidence, the lower court was perfectly correct in finding the accused guilty. Hence, the judgment of the lower court has got to be sustained.

7. This Court paid its full attention on the rival submissions and had a close scrutiny on the materials available and is of the considered view that these appeals do not carry any substance. In the instant case, it is not

in dispute that P.W.1, driver accompanied by P.W.2 cleaner was proceeding in a lorry bearing Registration No. PY-01/C 0 200 towards Coimbatore. On 13.7.2000 at about 2.00 a.m. they stopped the lorry along with cotton bales worth Rs.12 lakhs near Vijayamangalam NH 47 Main Road and were sleeping in the vehicle. At that time, accused Nos.1 and 2 along with three other accused came there with the common intention of committing dacoity and attacked P.W.1 with torch light and caused simple injuries on the head of P.W.1 and snatched sum of Rs.1000/- from P.W.1. The accused torn the lungi of P.W.2 and tied P.Ws.1 and 2's eyes. P.Ws.1 and 2 were taken to a particular place therefrom and they were left there. The appellants herein along with others took away the lorry with cotton bales worth Rs.12 lakhs and abandoned the same in some other place. At this juncture, it has got to be pointed out that the lorry bearing registration No.PY-01-C-0200 was driven by P.W.1 and P.W.2 was the cleaner was not in dispute. A case was registered at 7.00 a.m. and investigation was also taken up. At the time of investigation, the said lorry along with entire cotton bales have been recovered and they have also been marked before the court. The contention of the appellants' side that no identification parade was conducted and it would affect the prosecution case has got to be discountenanced. Taking into consideration of the facts and circumstances of the case, the occurrence could have taken place over the period of time. From the available evidence it could be well seen that the lorry was stopped and P.Ws.1 and 2 were sleeping there. There was a street lamp in that place and the same was burning at that time. A perusal of the rough sketch would clearly show the availability of light at that time. Taking into consideration the said aspect, P.Ws.1 and 2 could have clearly seen the accused at that time and thus there was no difficulty for P.Ws.1 and 2 to identify the accused before the Court.

8. It is pertinent to note that it is not the case where the identification parade was conducted and P.Ws.1 and 2 could not identify the accused. The prosecution has come forward to state that after two months from the date of occurrence, P.Ws.1 and 2 on information went to police station and identified the appellants/accused there itself. Under the stated circumstances, there is no doubt that could prevail as to whether P.Ws.1 and 2 could have seen the appellants at the time of occurrence. Further, during the time of investigation A1 and A2 were arrested and pursuant to the confessional statement given by A1 Rs.1000/- was recovered from him. It is true that the evidence of P. W.3, V.A.O. casts a doubt whether he witnessed the recovery of Rs.1000 /-, but the appellants' side is unable to show any reason or circumstance to disbelieve the evidence of police official before whom the accused made such a statement and recovery has been done. Merely because the evidence of P.W.3 has failed, it cannot be stated that the prosecution case has got to be rejected. P.W.1 who sustained simple injury was taken to P.W.6 Doctor. P.W.6 has given treatment to P.W.1 and has recorded the statement of P.W.1 that P.W.1 was assaulted by unknown persons with torch light as alleged by the prosecution. The accident register has also been filed in that regard. This medical evidence has corroborated the ocular evidence adduced by the prosecution. Taking into consideration of the facts and circumstances of the case, this court is of the view that the prosecution has proved its case beyond all reasonable doubt. The trial court was perfectly correct in finding the accused guilty under Section 395 I.P.C.

9. Coming to the question of sentence, the trial court has awarded

ten years R.I. and fine of Rs.1000/- in default 6 months R.I. This Court is of the considered view that awarding punishment of 7 years R.I. would meet the ends of justice. Accordingly, the sentence awarded by the trial court on the accused 1 and 2 is reduced to 7 years R.I. In other respect, the judgment of the trial court is confirmed. With the above modification, both the criminal appeals are dismissed. The Sessions Judge shall take steps to commit the accused No.1 to prison, if he is on bail, to undergo the remaining period of sentence.

Index : Yes
Internet : Yes
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To
1. The Judicial Magistrate, Usilampatti
2. The Judicial Magistrate, Usilampatti
through the Chief Judicial Magistrate, Madurai and Erode
3. The Addl.Dist.Sessions Judge(Fast Track Court No.1),Erode
4. The Principal District and Sessions Judge, Erode
5. The Superintendent, Central Prison, Madurai
6. The Public Prosecutor, High Court, Madras
7. The Dy. Inspector General of Police, Chennai-4
8. Mr.V.Jaya Prakash Narayan, Govt. Advocate(Crl side)
High Court, Madras
9. The Inspector of Police, Perundurai Police Station.

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